Paper No. 6

All communications respecting this case should identify it by number and names of parties.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: BOX INTERFERENCE
Commissioner of Patents and Trademarks
Washington, D.C. 20231

Telephone: (703) 308-9797
Facsimile: (703) 308-7953

Applicants: Fischhoff et al
Serial No.: 08/434,105
Filed: 05/03/95
For: Synthetic Plant Genes and Method for Preparation
Accorded benefit: U.S. Serial Nos. 07/959,506, filed 10/09/92, now U.S. Patent No. 5,500,365, issued 03/19/96, 07/476,661, filed 02/12/90, now abandoned and 07/315,355, filed 02/24/89, now abandoned

The case referred to above has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with other cases hereafter specified. Attention is directed to the fact that this interference is declared pursuant to 37 C.F.R. § 1.601 et seq., effective April 21, 1995 (60 F.R. 14488, 1173 O.G. 384). The interference is designated as No. 103,781.

By direction of the Commissioner of Patents and Trademarks and as required by 35 U.S.C. § 135(c), notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

The cases involved in this interference are:

Junior Party

Applicants: Kenneth A. Barton and Michael J. Miller

Addresses: 4919 Hickory Trail, Middleton, WI 53562
1401 Main Street, Cross Plains, WI 53528

Serial No.: 07/827,906, filed 01/30/92

For: Improved Expression of Genes in Plants

Assignee: None

Attorneys of Record: Nicholas J. Seay, Thad F. Kryshak, Carl Schwartz, and Albert Halluin

Associate Attorney: None

Accorded Benefit of: U.S. Serial No. 07/390,561, filed 08/07/89

Address: Quarles & Brady
P.O. Box 2113
Madison, WI 53701-2113

Junior Party

Applicants: David A. Fischhoff and Frederick J. Perlak

Addresses: 28 North Maple Ave., Webster Groves, MO 63119
11035 Crimson Drive, St. Louis, MO 63146

Serial No.: 08/434,105, filed 05/03/95

For: Synthetic Plant Genes and Method for Preparation

Assignee: None

Attorneys of Record: Dennis R. Hoerner, Jr., Howard C. Stanley and Arnold H. Cole

Associate Attorney: Lawrence M. Lavin, Jr.

Accorded Benefit of: U.S. Serial Nos. 07/959,506, filed 10/09/92, now U.S. Patent No. 5,500,365, issued 03/19/96, 07/476,661, filed 02/12/90, now abandoned and 07/315,355, filed 02/24/89, now abandoned

Address: Lawrence M. Lavin, Jr.
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Senior Party

Patentees: Michael J. Adang, Thomas A. Rocheleau, Donald J. Merlo and Elizabeth E. Murray

Addresses: 160 Tamarack, Athens, GA 30605
3100 Buena Vista, Madison, WI 53704
4612 Springbrook Court, Midland, MI 48640
2426 Commonwealth Ave., Madison, WI 53711

Serial No.: 08/057,191, filed 05/03/93, Now U.S. Patent No. 5,380,831, issued 01/10/95

For: Synthetic Insecticidal Crystal Protein Gene

Assignee: Mycogen Plant Science, Inc., San Diego, Calif.

Attorneys of Record: Roman Saliwanchik, David R. Saliwanchik, Jeff Lloyd, and Ted W. Whitlock

Associate Attorney: None

Accorded benefit: U.S. Serial Nos. 07/827,844, filed 01/28/92, now abandoned, 07/242,482, filed 09/09/88, now abandoned

Address: Jeff Lloyd
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Gainesville, FL 32606-6669

Count 1

A method of designing a synthetic *Bacillus thuringiensis* gene to be more highly expressed in plants, comprising the steps of:

a) analyzing the coding sequence of a gene derived from a *Bacillus thuringiensis* which encodes an insecticidal protein toxin, and modifying a portion of said coding sequence to yield a modified sequence which contains a greater number of codons preferred by the intended plant host than did said coding sequence, or

b) analyzing the coding sequence of a gene derived from a *Bacillus thuringiensis* which encodes an insecticidal protein toxin, and modifying a portion of said coding sequence to yield a modified sequence which contains a greater number of codons preferred by the intended plant host than did said coding sequence and fewer plant polyadenylation signals than said coding sequence.

The claims of the parties which correspond to this count are:

Barton et al: Claims 1-4, 7, and 15-22
Fischhoff et al: Claims 3, 5, and 39-43
Adang et al: Claims 1-14

Ronald H. Smith

RONALD H. SMITH
Administrative Patent Judge
(703) 308-9797

RHS/dal

FORM PTO-222
(REV. 1-90)

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

INTERFERENCE DIGEST

Interference No. 103,781 Paper No. 7

Name, Fischhoff et al.

Serial No. 08/434,105 Patent No. _____

Title, SYNTHETIC PLANT GENES AND METHOD FOR PREPARATION

Filed, 05/03/95

Interference with Barton, et al. v. Adang et al.

DECISION ON MOTIONS

Examiner-in-Chief, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, Favorable Dated, 1/29/04

Court, _____ Dated, _____

REMARKS

Adverse Judgment to Barton et al.
Redeclaration Sept. 4, 2002

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This should be placed in each application or patent involved in interference in addition to the interference le-ters